

REMARKS

Claims 1 and 3-17 were previously pending in the present application. Claims 8-17 have been cancelled in this paper, leaving Claims 1 and 3-7 pending and at issue. Of the remaining claims, Claim 1 has been amended to clarify the configuration of the recess and the locking member. No other claims have been amended.

Claims 1 and 7 stand currently rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 5,476,187 to Marisco (hereafter "Marisco"). Claims 1 and 3 stand rejected under 102(b) as anticipated by U.S. Patent No. 5,836,553 to Bergaila (hereafter "Bergaila"). Finally, Claims 1 and 3-7 also stand rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 5,119,957 to Joyce-Middaugh (hereafter "Joyce-Middaugh") in view of Marisco and Bergaila. Applicants traverse these rejections and request reconsideration in view of the amendments above and the arguments presented below.

MARISCO

Marisco is directed to a retainer means used to secure a bag liner onto the grooved rim of a container. The retainer 16, as shown in FIGS. 2A, 2B and 3, comprises a concave portion 38 running along the entire bottom end and is used to store excess bag liner. The grooved section 14 in the same figures looks like an upward-facing channel member at the upper end of the wall of the container 10. The bag liner 18 is frictionally engaged by the retainer means 16 as it is inserted into the grooved section 14 around the complete periphery of the container 10.

Marisco does not disclose a surface integral to and projecting from the sidewall and a locking portion defining a recess, wherein the locking portion and the recess are disposed on the surface adjacent the upper rim as required by Claim 1. Marisco does not disclose a surface (or

related component) at all. Further, the locking member of Marisco (i.e., retainer means 16) does not have a non-continuous bag-retaining notch, rather it has a continuous notch (i.e., it has no ends) which runs the length of the retainer 16. Also, the notch (concave portion 38) is not carried by the locking portion for movement between a release position and a locking position wherein the notch is entirely within the recess and below the surface when in the locking position. The retainer 16 of Marisco is inserted and removed entirely from the grooved section 14, and the notch (concave portion 38) cannot be said to be below the surface when in the locking position.

Accordingly, Claim 1 clearly distinguishes over Marisco. Applicant respectfully contends that in light of this explanation and the above amendments, any further rejection of this claim based on Marisco is without merit. Reconsideration is respectfully requested.

BERGAILA

This patent is directed to a device for hold bags open to receive material, such as garbage, for example, absent a container. The invention comprises a bag support ring 12 and a bag lock ring 18. The two ring components are hinged together at the indexing mounting bracket 24. With reference to Figures 2-4, the bag lock ring 18 has a groove 40 within a portion of the ring that inserts into the channel of the supporting ring 12. The groove 40 and channel are continuous.

Bergaila does not disclose a sidewall having an upper rim and defining a bag-receiving area, as required by Claim 1. The reference does not disclose a surface integral to and projecting from the sidewall and a locking portion defining a recess, wherein the locking portion and the recess are disposed on the surface adjacent the upper rim, as required by Claim 1. Like Marisco, Bergaila does not disclose a surface at all on which the locking portion and recess may be

defined. Further, the bag lock ring of Bergaila does not have a non-continuous bag-retaining notch, rather it has a continuous groove which runs the length of the ring 18. Also, the notch (groove 40) is not carried by the locking portion for movement between a release position and a locking position wherein the notch is entirely within the recess and below the surface when in the locking position. The ring 18 of Bergaila has a portion which is inserted and removed entirely from the channel of the supporting ring 12, and the notch (groove 40) cannot be said to be below the surface when in the locking position.

Accordingly, Claim 1 clearly distinguishes over Bergaila. Applicant respectfully contends that in light of this explanation and the above amendments, any further rejection of this claim based on Bergaila is without merit. Reconsideration is respectfully requested.

JOYCE-MIDDAUGH

This reference is directed to a divider used to create a plurality of compartments within a trash can, with each compartment having its own disposable trash can liner. The divider 20 is designed to sit on the rim of the trash container 11, as illustrated in Figure 8. The divider 20 is comprised of a peripheral support member 21 and a plurality of dividing members 25 radially extending from a center point. The peripheral support member 21 and dividing members 25 are disclosed to be U-shaped. A plurality of fasteners 33 (Figure 1) sit within the U-shaped dividing members 25 and, being hinged at one end, operate in either an open or closed position. When closed, the fasteners 33 hold a flexible bag.

Joyce-Middaugh does not disclose a surface integral to and projecting from the sidewall and a locking portion defining a recess, wherein the locking portion and the recess are disposed on the surface adjacent the upper rim, as required by Claim 1. Like the previous references, Joyce-Middaugh does not disclose a surface at all on which the locking portion and recess may

be defined. Further, the dividing members of Joyce-Middaugh do not have a non-continuous bag-retaining notch, rather each intersects with the peripheral support member to provide a continuous U-shaped channel. Also, Joyce-Middaugh does not disclose a notch carried by the locking portion for movement between a release position and a locking position wherein the notch is entirely within the recess and below the surface when in the locking position. Even if one were to modify Joyce-Middaugh to include the notch as disclosed in either Marisco or Bergaila, the resulting component cannot be said to be below the surface when in the locking position because there is no such surface.

Accordingly, Claim 1 clearly distinguishes over Joyce-Middaugh, considered either alone or in combination with Marisco and/or Bergaila. Applicant respectfully contends that in light of this explanation and the above amendments, any further rejection of this claim based on Joyce-Middaugh is without merit. Reconsideration is respectfully requested.

Claim 1-as amended

Claim 1 has been amended to add the limitation of the surface being integral to the sidewall of the holder. Support for this amendment can be found in the several drawing figures of the present application. In the case of Bergaila and Joyce-Middaugh, the disclosed devices were either stand alone (i.e., required no container) or attachable to an existing container. Marisco disclosed having a channel positioned in place of a container rim, but also omitted the use of a proper surface, integral or otherwise.

A further limitation added to Claim 1 requires the notch to be non-continuous. Support for this amendment can be found in the drawing of FIGS. 7-9. In the first two cited references, the “notch” disclosed is a continuous loop. This requires the bag to be inserted at several points

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about the periphery of the container, far more complicated than having a single, non-continuous notch, as required by the present Claim 1.

No new matter has been added to the present application. All pending claims are believed to be in condition for allowance.

CONCLUSION

Claims 1 and 3-17 were previously pending in the present application. Claims 8-17 have been cancelled in this paper, leaving Claims 1 and 3-7 now pending and at issue. Claim 1 is independent and all other claims depend therefrom. Of the remaining claims, Claim 1 has been amended to clarify the configuration of the recess and the locking member. No other claims have been amended. Applicant contends that, as amended, Claim 1 and all its dependent claims, now distinguish over the cited references and are in condition for allowance. Reconsideration and Notice to that effect of all remaining claims is respectfully requested and earnestly sought.

If any formal issues remain with respect to the pending claims which can be addressed by Examiner's Amendment, Applicant requests the undersigned attorney be contacted in an effort to expedite prosecution.

Respectfully submitted,

By  _____

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